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IN THE

Supreme Court of the United States

October Term, 1979
Nos. 79-421, 79-425, 79-435

STATE OF CALIFORNIA, *et al.*,

Petitioners,

vs.

BEN YELLEN, *et al.*,

Respondents.

BRIEF OF PETITIONER STATE OF CALIFORNIA

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Opinions Below

The decision of the United States Court of Appeals is reported at 559 F.2d 509 (9th Cir. 1977). A subsequent decision, modifying the first decision and denying petitions for rehearing, is reported at 595 F.2d 524 (9th Cir. 1979). The decision of the District Court is reported at 322 F.Supp. 11 (S.D.Cal. 1971). All these decisions were reproduced in the Appendix to Petition for Writ of Certiorari filed by Imperial Irrigation District in this same case (pp. 1a-61a, 64a-111a).

Jurisdiction

The decision of the United States Court of Appeals was rendered on August 18, 1977. That decision was subsequently modified by an order entered April 23, 1979, which denied the State of California's petition for rehearing. On July 18, 1979, Justice Stevens granted

an extension of time to and including September 14, 1979, within which to file a petition for writ of certiorari. Jurisdiction of the Supreme Court was invoked under 28 U.S.C. § 1254(1). The Supreme Court granted California's petition for writ of certiorari on December 3, 1979.

Questions Presented

The State of California associates itself with the petitions for writ of certiorari and briefs filed by John Bryant, *et al.* (the landowners) and by the Imperial Irrigation District. The State generally joins in the questions presented and the arguments made in those petitions and briefs. For its own part, however, the State raises just one question.

Should a long-standing administrative interpretation that the acreage limitation of federal reclamation law does not apply to privately-owned lands within the Imperial Irrigation District be overturned by a court even though such interpretation was reasonable and was relied upon for over thirty years by persons within its ambit?

Federal Laws Involved

This case involves the following provisions: Article VIII of the Colorado River Compact; Sections 3 and 5 of the Reclamation Act of 1902 (43 U.S. Code §§ 434, 431); Section 46 of the Reclamation Act of 1926 (43 U.S. Code § 423e); and Sections 1, 6, 8, 9, 13, and 14 of the Boulder Canyon Project Act (43 U.S. Code §§ 617, 617e, 617g, 617h, 617*l*, 617m). All these provisions were reproduced in the Appendix to Petition for Writ of Certiorari filed by Imperial Irrigation District (pp. 155a-168a, 172a-175a).

Statement of the Case

The central question of this case is whether the 160-acre limitation of federal reclamation law applies to privately-owned lands within the Imperial Irrigation District which are being irrigated with water provided by the federal government pursuant to the Boulder Canyon Project Act of 1928.

1. Facts of the Case

The State of California does not propose an exhaustive review of the facts already covered in the petitions and briefs filed by John Bryant, *et al.* and by Imperial Irrigation District. However, the State does wish to highlight certain facts particularly relevant to its argument.

In his letter of February 24, 1933, to the Imperial Irrigation District, Secretary of the Interior Wilbur stated, in part, as follows:

> "Early in the negotiations connected with the All-American Canal contract the question was raised regarding whether and to what extent the 160-acre limitation is applicable to lands to be irrigated from this canal. Upon careful consideration the view was reached that this limitation does not apply to lands now cultivated and having a present water right. These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned. Congress evidently recognized that these lands had a vested right when the provision was inserted that no charge shall be made for the storage, use, or delivery of water to be furnished these areas.

"In connection with the activities of the Bureau of Reclamation it has been held that the provisions of section 5 of the reclamation act restricting the sale of a right to use water for land in private ownership to not more than 160 acres will not prevent the recognition of a vested water right for a larger area, and protection of the same by allowing the continued flowage of the water covered by the right through the works constructed by the Government. . . ." (Reproduced in the Appendix to Petition for Writ of Certiorari filed by Imperial Irrigation District).

There is no question that from the date of the Wilbur letter in 1933 up through 1964, the administrative practice of not applying acreage limitations to the Imperial Valley never varied. The Department of the Interior made no attempt to apply the acreage limitation in the Imperial Valley during that 31 years, a fact testified to by a major Government witness. (Rep. Tr. pp. 145, 191, 328, 332.)

There is also no question that many people in the Imperial Valley relied on the Wilbur ruling in investing in land, improvements, and equipment during the 1933-64 period. In 1933, 213,000 acres, or 46.6 percent of the farmland in the Imperial Irrigation District, was farmed in units exceeding 180 acres. In 1959, 456,000 acres, or 91.5 percent of the total farmland, was farmed in units exceeding 180 acres. (Rec. on App., Vol. II, p. 20.) So during part of the 1933-64 period, the amount of land farmed well in excess of the 160-acre limitation more than doubled.

Eight long-time landowners from various parts of the Imperial Valley testified as to their investment in land in excess of 160 acres, improvements, and equipment during the 1933-64 period. All made their investments in reliance on the nonapplicability of the 160-acre limitation to the Imperial Valley. (Rep. Tr. pp. 287, 290, 318-19, 343-50, 358-63, 369-70, 373-75, 384-89, 393-97, 401-05, 418-23.)

2. Nature of the Case and Prior Proceedings

The United States of America filed the complaint in this case against the Imperial Irrigation District on January 11, 1967, in the United States District Court for the Southern District of California, invoking jurisdiction under 28 U.S. Code § 1345. The United States asked that the Imperial Irrigation District be adjudged to be bound to the 160-acre limitation of reclamation law in the delivery of Colorado River water to all privately-owned lands within the Imperial Irrigation District. Thereafter, a group of Imperial Valley landowners (John Bryant, *et al.*) and the State of California were allowed to intervene as defendants. After trial in December 1970, the court issued a memorandum decision on January 5, 1971, holding in favor of the defendants.

The United States of America did not appeal but respondents Ben Yellen, *et al.*, moved to intervene for purposes of appeal. On March 29, 1971, the District Court denied this motion and on April 2, 1971, appellants appealed that denial to the United

States Court of Appeals for the Ninth Circuit. On August 6, 1973, the Court of Appeals reversed the District Court denial and allowed appellants to intervene for purposes of appeal. The Court of Appeals further ordered this case to be argued together with the case of *Yellen v. Hickel,* which involves the residence requirement of federal reclamation law vis-a-vis privately-owned lands in the Imperial Irrigation District. However, the State of California is not a party to that case.

On August 18, 1977, the Court of Appeals issued its decision, holding in the present case that the acreage limitation does apply and thus reversing the judgment of the District Court. John Bryant, *et al.,* Imperial Irrigation District, and the State of California all filed petitions for rehearing in September 1977. The State's petition also requested modification of the court's judgment. On April 23, 1979, the Court of Appeals issued a further decision denying all petitions for rehearing but modifying its judgment as requested by the State. The State's petition for writ of certiorari followed that decision.

ARGUMENT

The Court of Appeals' Decision Casts Strong Doubt on the Ability of Persons Seeking the Interpretation by a Government Agency of the Very Laws It Is Required to Apply and Enforce to Rely on Such Interpretation

The State of California contends, as it has in the lower proceedings, that this case need not be decided on the basis of whether the Boulder Canyon Project Act made the 160-acre limitation applicable to privately-owned lands within the Imperial Irrigation District. Instead, the case can and should be decided on a narrower ground. Secretary of the Interior Wilbur concluded, in his 1933 letter to the Imperial Irrigation District, that the acreage limitation was not applicable. If this was a *reasonable* interpretation of the Project Act, then as an administrative determination of long standing, relied upon by a substantial number of people, it should not be overturned by a court. The issue should be whether the Wilbur conclusion was a reasonable interpretation, not whether it was the correct one. Unless it were unreasonable and plainly wrong, it should be upheld, and the acreage limitation should not be applied within the District.

The Court of Appeals concludes that the acreage limitation does apply and also apparently that Secretary Wilbur could not have reasonably concluded otherwise. The State of California fails to see how the court could so hold and could so overlook the basic fairness issue inherent in our argument. If the present decision stands, no one seeking the interpretation by a government agency of the very laws it is required to apply and enforce will be able to confidently rely on such interpretation. If government can change its mind more

than thirty years later and summarily terminate expectations of persons who have long relied on an earlier determination, then no one will be able to count on such administrative interpretations. Such a result would have detrimental implications far beyond the particulars of the present case.

A. The Test the Court Should Apply in Deciding This Case Is Whether Secretary Wilbur's Administrative Interpretation of the Boulder Canyon Project Act Was Reasonable

This Court has established that an administrative interpretation of long standing, which has been generally unchallenged, shall not be overturned unless that interpretation is wholly unreasonable.

> "[A]dministrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons. . . . The practice has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new. . . ." *Norwegian Nitrogen Co. v. U.S.* (1933) 288 U.S. 294, 315.

Similarly, this Court has declared:

> " 'If not the only reasonable construction of the act, it is at least an admissible one. It therefore comes within the rule that the practical construction given to an act of Congress, fairly susceptible of different constructions, by those charged with the duty of executing it is entitled to great respect and, if acted upon for a number of years, will not be disturbed except for cogent reasons.' "

> *McLaren v. Fleischer* (1921) 256 U.S. 477, 480-81, as quoted in *Udall v. Tallman* (1965) 380 U.S. 1, 18.

The Court in *Udall v. Tallman, supra* at 18, then goes on to make its decision on the basis of whether or not an interpretation by the Secretary of the Interior was reasonable.

The reasonableness principle of *Udall v. Tallman, supra*, is particularly applicable in cases where the administrative interpretation has been relied upon by a substantial number of persons within its ambit. *Logan v. Davis* (1914) 233 U.S. 613, 626-27; *Kindred v. Union Pacific R.R. Co.* (1912) 225 U.S. 582, 596; *Hewitt v. Schultz* (1901) 180 U.S. 139, 156-57; *United States v. Alabama Railroad Co.* (1892) 142 U.S. 615, 621; *United States v. Burlington etc. R.R. Co.* (1878) 98 U.S. 334, 341-42.

In the present case, there is no question that there was an administrative interpretation of federal reclamation law (the Wilbur letter) that went virtually unchallenged for 31 years and was relied upon by a substantial number of persons in the area of its effect, the Imperial Valley. This seems to be an ideal case for applying the reasonableness principle of *Udall v. Tallman, supra*, since countless citizens of the entire Imperial Valley region have acquired and developed arable lands in reliance on the government's long-standing practice of not applying the 160-acre limitation in the area.

Udall v. Tallman, supra, is but one of a line of cases giving great weight to established administrative interpretations of statutes and other government regulations. The fact that *Tallman* may be factually distin-

guishable from the present case does not render its rule of law any less applicable. Also, the fact that *Tallman* involves the interpretation of an administrative regulation rather than an act of Congress, as here, is not significant. *Tallman* incorporates language from *McLaren v. Fleischer, supra,* which specifically refers to the interpretation of acts of Congress. Furthermore, *McLaren* itself and *United States v. Alabama Railroad Co., supra,* are cases in which reasonable administrative interpretations of acts of Congress were upheld.

Finally, the *Tallman* rule can apply to protect private rights even when an alleged national policy may be involved, such as acreage limitation. *United States v. Alabama, supra,* holds that such rights acquired in reliance on long-standing administrative rulings will be protected, even against the government. In any case, the State of California believes that national policy should also be concerned with protecting persons and a region whose long-term economic development was based on reliance on long-standing government interpretation of federal reclamation law.

B. The Consistent Administrative Interpretation Was a Reasonable Interpretation of the Boulder Canyon Project Act, and as Such, Should Not Be Disturbed by the Court

The key to resolution of this matter lies in the question of whether Secretary Wilbur's 1933 interpretation of the Boulder Canyon Project Act was reasonable. The Secretary's conclusion that the acreage limitation is not applicable to privately-owned lands in Imperial Irrigation District rested on two premises: (1) that such lands have vested rights; and (2) that the Boulder Canyon Project Act does not impose limitations on lands having vested rights.

There can be no doubt that the Secretary was probably correct, but at the very least reasonable, in finding that privately owned, Imperial Valley lands had vested water rights. By paragraph 12(a) of the Stipulation of Facts (Rec. on App., Vol. II, p. 9), all parties agreed that such rights existed.[1] However, the Court of Appeals has determined that these vested (present perfected) water rights are held by the Imperial Irrigation District, not by individual landowners and thus can be used on any land within the District. But this is a dubious proposition, at best, since present perfected rights are tied to defined areas of land and presumably attach to that land irrespective of who owns it or whether it is held as excess acreage. Therefore, it appears that Secretary Wilbur was correct in his premise that privately-owned lands within the District have vested rights. At the very least, however, such a conclusion was reasonable. We thus turn to the Secretary's second premise to determine whether it was reasonable when made.

Section 1 of the Boulder Canyon Project Act provides that the Secretary of the Interior shall build a dam, and, if deemed advisable, a canal for diversion of waters from the Colorado River to Imperial Valley. The pur-

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[1]The Stipulation provides that there exists within the boundaries of the Imperial Irrigation District "present perfected rights" as that quoted phrase is construed and defined in *Arizona v. California,* 373 U.S. 546 (1963), 376 U.S. 340 (1964), 383 U.S. 268 (1966). (Rec. on App., Vol. II, p. 9.) A present perfected right is defined as a water right acquired in accordance with state law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land and existing as of June 25, 1929. *Arizona v. California* (1964) 376 U.S. 340. And this Court has subsequently recognized the existence of such rights within the District in a supplemental decree in *Arizona v. California,* .... U.S. .... (1979).

pose of the dam is, in part, for satisfaction of present perfected rights in pursuance of the Colorado River Compact. (Section 6 of the Project Act.) Water delivered through the dam and canal is to be provided to Imperial free of charge for irrigation and potable purposes. (Section 1 of the Project Act.) All water deliveries and other activities with regard to the operation and management of the dam are controlled by the Colorado River Compact. (Sections 8 and 13 of the Project Act.)

Congress was well aware that the water had been used in the Imperial Valley since 1901. It was equally well aware that the intent of the Colorado River Compact was to leave unimpaired present perfected rights. (Colorado River Compact, November 24, 1922, § VIII.) Finally, it has before it the facts that there were holdings in excess of 160 acres at the passage of the Act. In writing the Project Act with its insistence that the Colorado River Compact be the controlling guide, and that present perfected rights be honored, it would be at least reasonable to assume, as Secretary Wilbur did, that Congress intended not to interfere or restrict the delivery of water to privately-owned lands already having vested water rights.

This intent becomes manifest by a reading of Section 9 of the Project Act. That section provides that the acreage limitation shall apply to newly opened public lands in accordance with the provisions of the reclamation law. It is a reasonable conclusion that if the excess land laws are expressly made applicable to newly opened public lands, that limitation is not applicable to privately-owned lands which long since had acquired a water right. In the light of these specific directives by Congress, it is reasonable to conclude that Section

14 of the Project Act did not operate to provide an acreage limitation upon privately-owned Imperial lands. If Section 14 did incorporate and apply all previous reclamation law to Imperial lands, including thereby the prohibition against water delivery to privately-owned lands greater than 160 acres under Section 46 of the Reclamation Law of 1926, then it also incorporated the 160-acre limitation on public lands from Section 3 of the 1902 Reclamation Act. But if it were so inclusive, then the public land limitation of Section 9 of the Project Act would be mere surplusage, which we cannot reasonably assume.

Even if we assume that Section 14 of the Project Act were all-inclusive as to the reclamation law, it is very questionable whether it would operate so as to incorporate Section 46 of the 1926 Act with regard to water deliveries within the Imperial Irrigation District. Section 14 of the Project Act only provides that the reclamation law shall govern the "construction, operation, and management of the works herein authorized. . . ." It says nothing about water deliveries from these facilities. Furthermore, even if Section 14 of the Project Act were deemed to include deliveries, its entire language is still qualified by the closing phrase "except as otherwise herein provided." What is "otherwise herein provided" in the Project Act, among other things, is that present perfected rights under the Colorado River Compact be honored. Therefore, if Section 46 of the 1926 Act were to apply via Section 14 of the Project Act so as to preclude water deliveries to privately-owned Imperial farms greater than 160 acres, such application would be nullified by the "except as otherwise herein provided" language so as to honor the present perfected rights to water delivery

that existed on those 160-plus acre farms at the time of the passage of the Project Act.

The State of California contends that Secretary Wilbur's interpretation was probably correct but was, at the very least, reasonable in light of the analysis above. Further, Secretary Wilbur's ruling was one in a series of similar Department of the Interior interpretations dating back to the Umatilla Project in 1905. As Secretary Wilbur notes:

> "On many projects it has been the practice to recognize vested rights in single ownership of 160 acres and to deliver the water necessary to satisfy such rights through works constructed by and at the expense of the Government. This is true of the Newlands project, the North Platte project, the Umatilla project and others.
>
> ". . . .
>
> "The foregoing has been long settled by decisions of the Department and by the practice of carrying such decisions into effect." (Wilbur letter)

Certainly, 28 years of precedent is not an unreasonable basis for interpretation.

Finally, the position of the Secretary himself should be considered. Ray Lyman Wilbur was Secretary of the Interior throughout the Hoover Administration. It was his Department that would be affected by the new regional concept of water development incorporated in the Boulder Canyon Project Act. It was his Department that would build the Project, his that would operate it, his that would bear the responsibility of delivering the water from it, his that would enforce the acreage limitations if any there were. It was his

staff that testified before the Congressional committees, his staff that negotiated the contract for the All-American Canal, his staff that determined the feasibility of the canal. It was his job to supervise these operations of staff and of assuring that the Project Act was properly implemented. What we suggest is that the Secretary, with his direct personal knowledge of the facts from his unique vantage point in time and position, made a decision which was at least reasonable if not correct, and, in fact, more likely to be both than a decision promulgated 34 years after the fact. It is this concept which underlies the long recognized rules holding administrative interpretations as this to be binding save for extraordinary circumstances.

The Court of Appeals' rejection of this argument is not persuasive. The court dismisses the Wilbur letter as irrelevant because it does not explicitly address the key provision of reclamation law at issue, Section 46 of the 1926 Act. From a fairness standpoint, however, that should not matter. What is crucial is that Secretary Wilbur wrote the District and stated that the acreage limitation did not apply. He based his conclusion on the premises that the private lands involved had vested rights and that the Boulder Canyon Project Act did not impose the acreage limitation on lands having such rights. As we have shown, *supra,* a reasonable argument exists in support of this conclusion, and one which takes into account Section 46. Therefore, it cannot be said that Secretary Wilbur's interpretation was unreasonable or plainly wrong. Absent this, the reliance it engendered over more than 30 years compels its conclusion to be upheld.

The Court of Appeals also notes that the Wilbur letter was not written until after the District contracted

with the United States for water, as if this somehow negates any alleged reliance on the letter. However, as we have also noted, *supra,* many individuals subsequently, and over a period of years, relied on the Wilbur determination in investing in land, improvements, and equipment. The reliance and fairness issue in this regard is undeniable.

Finally, the Court of Appeals points out that doubts as to the legal validity of the Wilbur letter arose within the Department of the Interior long before 1964, the year in which it was officially disapproved by Solicitor Barry. However, internal disputes at Interior are simply irrelevant as long as the Wilbur letter continued to represent official Interior policy and as long as no attempt was made to enforce the acreage limitation within the Imperial Irrigation District.

The record is that the Wilbur letter engendered a reliance on the part of individual Imperial Valley landowners for a period of 31 years. Even if the Court of Appeals is correct in its interpretation of reclamation law as applied within the Imperial Irrigation District, it surely was wrong to find that Secretary Wilbur's contrary interpretation was wholly unreasonable or plainly wrong in an area where the variety of contradictory and ambiguous statutory provisions precludes a clear and unequivocal meaning. In such a case, the long-standing administrative interpretation should be upheld in the interest of fairness. Therefore, the acreage limitation should not be applied to privately-held lands within the District.

Conclusion

For the foregoing reasons, it is respectfully requested that the decision of the United States Court of Appeals be reversed.

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